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DAILY BUSINESS REVIEW

PRACTICE FOCUS / FAMILY LAW

Same Marital Issues Apply to Same-Sex Marriages

Commentary by Richard Segal



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As a life-long Florida resident, it is a proud moment to see Florida recognize same-sex marriage and further equality for

all. This was a long time coming and is a day to celebrate.

However, the celebration and joy for many same-sex couples of finally being able to get married should not overshadow the fact that marriage still has very real legal ramifications for all newlyweds.

For those same-sex couples who have been together for a very long time and marriage now is simply a legal recognition for their already long-established loving relationship, many of these legal family law principles such as equitable

distribution and alimony might be novel concepts to consider and should spark new and open conversations with a spouse before deciding to run to the altar.

Many same-sex couples are well-established in their careers and are walking into the marriage with love and joy—but also with a lot of assets.

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As a family law practitioner and partner at Kluger, Kaplan, Silverman, Katzen & Levine, I would advise any potential couples, young or old, gay or straight, that a prenuptial agreement is a wonderful tool to lay out from the outset before getting married to decide what each spouse would receive if the marriage unfortunately came to an end.

As I explain to potential clients, my firm would never advise potential business partners to go

into a lifelong deal, invest all of their assets, but not document the deal and enter into a clear partnership agreement.

Thinking from a practical standpoint, and unfortunately recognizing the divorce rate in the U.S., it is not a faux pas to consider entering into a prenuptial agreement. If the marriage is strong and forever lasting, which we all go into marriage firmly believing, then a prenuptial agreement will always remain simply a document stashed away in a vanilla folder and never have an impact on the relationship. I fully envision seeing an uptick in business and am happy to now be able to protect all couples assets before marriage.

EQUITABLE DISTRIBUTION

It is anticipated, and I see no reason for the courts to deviate, that prior case law in Florida regarding family law issues in heterosexual marriages will equally apply to same-sex marriages.

Two important concepts to consider when entering into a marriage are equitable distribution and alimony. In Florida, under the equitable distribution statute, Fla. Stat. §61.075, marital assets and liabilities include:

- Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.

- The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

- Interspousal gifts during the marriage.

- All vested and nonvested benefits, rights and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation and insurance plans and programs.

Something to consider for couples thinking about marriage, as a practice tip, is that even nonmarital funds can be transmuted and characterized by the court as marital assets subject to equitable distribution if the nonmarital funds were commingled with marital

funds during the marriage.

In *Pfrenge v. Pfrenge*, 976 So. 2d 1134 (Fla. 2d DCA 2008), the court held that nonmarital funds lost their character once commingled in the husband's personal account with marital funds.

"Even if an account is titled in one spouse's name alone, it may become marital if both marital and nonmarital funds are commingled in that account," the court said.

ALIMONY

Another concept to consider is alimony.

"In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be bridge-the-gap, rehabilitative, durational or permanent in nature or any combination of these forms of alimony. In any award of alimony, the court may order periodic payments or payments in lump sum or both." See Fla. Stat. §61.08.

"In determining whether to award alimony or maintenance, the court shall first make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party

has the ability to pay alimony or maintenance." See also *Searcey v. Searcey*, 923 So. 2d 528, 529 (Fla. 2d DCA 2006).

Therefore for same-sex marriages there should be a moment taken that while their right to marry is now recognized in Florida, so too will their rights and obligations to each other be enforced once married, for example, through equitable distribution and alimony.

While some of these concepts seem daunting or something that any couple would prefer not to consider before reciting their vows of marriage, our firm always cautions clients, and no differently will continue to for same-sex couples, to consider entering into prenuptial agreements or at the bare minimum to have an open and frank discussion with your lover. The key to any marriage is open and honest communication.

Richard Segal is a partner at Kluger, Kaplan, Silverman, Katzen & Levine. He focuses his practice on commercial litigation and family law, assisting clients in a range of business and corporate litigation matters, and matrimonial disputes.